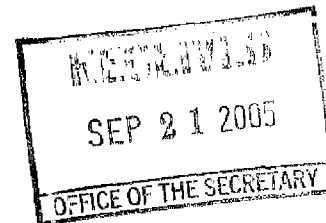




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September 14, 2005

Jonathan Katz, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-9303



RE: File Number SR-NASD-2004-183 – Comment on Proposed Rule
Governing the Purchase, Sale or Exchange of Deferred Variable Annuities

Dear Mr. Katz:

Thank you for the opportunity to comment on the above referenced rule proposal published on June 9, 2004.

As a member firm we support the NASD's effort as discussed in NTM 04-45 to provide the customer with better and more meaningful disclosure. We believe the plain English disclosure summary on product features and risks accompanied by a Q&A covering commonly misunderstood or confusing issues would encourage customers to read those portions of the prospectus for further clarity so they can make an informed investment decision. Additionally, we understand the need for additional training for these complex products and all their varying features and member firms enhanced efforts to provide adequate supervision of transactions in deferred variable annuity transactions. Investors Capital is committed to enhancing its efforts to protect investors by providing investors the information they need to make informed investment decisions. However, the Proposed Rule as it is currently purposed will place significant new burdens on broker-dealers placing them between the issuer of variable annuities and the investors.

The proposed rule raises several concerns:

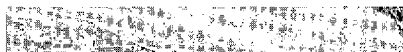
Product Specific Suitability

This may become a difficult task by the member firm. Paragraph (b) (2) of the proposed rule provides that each member make a reasonable effort to obtain certain *product specific suitability information* about the customer prior to recommending a DVA purchase or exchange. Our concern is by the fact that adequate rules are existing, such as NASD Rules 2210, IM 2210-2, Rules 2310 that provides satisfactory suitability standards for all products except high risk volatile products, these standards should be appropriate for determining suitability for DVA. The establishment of a new rule or standard adds confusion and is unnecessary. If the NASD believes a different or

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additional standard of suitability for DVAs it should develop the criteria through variable issuers and distributors of the product. It should ensure the criteria are clear and can be applied in a uniform manner. The NASD then should amend Rule 2310 to include the product specific criteria and add the criteria by Interpretative Memoranda (“IMs”). Additionally existing rules do not require member broker-dealers to make suitability determinations for unsolicited transactions in other products. Variable annuity insurance features in general require the broker-dealers to expand the scope of their suitability beyond traditional investments, other factors such as death benefits, estate planning and tax status are considered and a suitable basis to make a legitimate reasons for a solicitation of a variable annuity within a tax-qualified account. A client’s potential need or desire for a lifetime income, asset protections from creditors, death benefits, earnings enhancement and other guarantees and features a variable annuity product may provide can prove to be a legitimate basis of recommendation.

Proposed rule provides that a broker-dealer can not recommend the purchase, sale or exchange of DVA unless it has reasonable basis to believe the investor has a long term objective. This language purposed would not allow an investor that may meet other standards of suitability as an option. Long term objective should not be the only criteria as a determining factor for suitability, but rather measured by a case by case basis in light of the DVAs features and an investor’s individual objectives and needs.

Customized Point of Sale Disclosure

The financial burden placed on the member firm to provide, maintain and update it owns existing disclosure document to fit the issuers specific product is significant. Investors Capital Corporation an independent broker dealer currently maintains approximately 60 selling agreements with variable annuity product companies; within these companies lie several products, riders and varying features. The task of creating and maintaining supplemental disclosure documents with state specific variations per product is overwhelming. Requiring broker dealers to incur the cost of to create and customize point of sale disclosure will shift the burden and cost to he broker dealer selling the product rather than the manufacturing product sponsor. We support the NASD disclosure concerns in the proposing rule and supports its effort in providing meaningful disclosure to offer clarity of the DVA product, however other factors come in to consideration. The approval of the material by the respective state insurance department, and current duplication in disclosure. The SEC’s efforts guided by the NASD goals is best served by plain English disclosure language and sales literature brochures prepared by the manufacturing sponsor and incorporated into their prospectus and supplemental sales literature.

Principal Review

Paragraphs (c) and (d) of the Proposed Rule requires that a principal review and approve a variable annuity product within one day of the client signing the application. The Rule requires its member firms to establish certain suitability standards to be applied in connection with its supervisory review. The proposed rule provides that a principal shall

consider, in their review of a specific transaction the appropriateness of the sale: (1) to a customer over a certain age; and (2) where the amount being invested exceeds a stated percentage of the customer's net worth or is more than a stated dollar amount. These parameters are left to the member firm. The member firm is best served if the NASD offers clarity regarding the standard. The NASD should specifically state either the minimum standard it deems acceptable for the criteria so all member firms operate on a level regulatory and business playing field and not questioned by regulators on its interpretation. NASD will avoid the inevitable consequences that may result from different districts imposing their standards which may likely vary from district to district.

We are an independent member firm and this poses another time constraint to comply with. Many of our locations are remote and away from the home office that processes the business. A majority of our variable annuity sponsors still utilize hard copy and therefore our representatives complete their applications with physical paper. In many cases, especially in some areas where it may be hard to access overnight mail service would create logistical and administrative nightmares to submit to the home office or office of supervisory jurisdiction for review and approval within a 24 hour time period. Additionally the 24 hour turn around time to adequately review and obtain additional information to satisfy their determination for suitability. This may impede a supervisory principal from taking adequate time to complete the necessary review and due diligence to meet the proposed 24 hours deadline.

NASD Rule 2820(d), as written requires members to transmit applications for variable contracts "promptly to the issuer." We believe the proposed rule should be amended using the promptly timeframe to be consistent with 2820(d).

Additionally, state laws require variable products to a "free look" period that does not begin till the consumer receives the annuity contract. It is during this time frame that the investor can determine whether to keep or cancel the contract. This provision is an option that does not exist in other investment products.

Training

DVA are complex products and we support the NASD's effort as discussed in NTM 04-45 to provide investors with better, meaningful disclosure. We appreciate the fact that these complex products, their features and internal costs vary widely. We will support the NASD to mandate a more consistent and better training for RR and their supervisors. Member firms are already required to develop and maintain supervisory procedures appropriate for its business. Each firm is required to address its training needs annually with their requirement for the continuing education of its field force through the firm element requirement. Current regulatory principal exams and registration exams cover annuity products and most representatives selling annuities product licenses have insurance licenses and most professional designations which also require continuing education credits and additional training beyond their NASD examinations. In general, each member firm is required to address their training needs of its field force and

supervisory staff appropriate to its business. Therefore we do not believe variable annuity specific training requirements are necessary.

Summary

We believe that similar to other investment products there have been abuses involving the sales and exchanges of DVAs. We do not believe the abuse has occurred because the NASD's rules and enforcement mechanisms were not strong enough to prevent them. We do not believe the complexity of the products and its features outweigh the benefits they may provide to the investor. We do believe training and education to our representatives and supervisors and more meaningful disclosures to investors will ultimately aid in preventing or eliminating sales practice abuses. Our concern is the proposed rule will ultimately harm investors by making DVAs less available to those who may need and benefit from them as a legitimate tax-deferred savings and estate and retirement planning tools. Product specific disclosure created by the member firm is not appropriate. Many firms already employ the use of such general disclosures which clearly address key areas related to costs, tax matters, liquidity and its unique features. Investor education can further be supported by product sponsors and their disclosure material and the enhancement of plain English product prospectus.

We believe the final rule should be modeled after the industry's best practices to provide for flexibility and well defined standards that can be consistently applied by all member firms. The NASD should not dictate the types of investors to whom variable annuities can be sold.

Investors Capital Corporation appreciates the opportunity to provide comment to your proposed variable annuity ruling. We hope you find our letter useful in your review of the proposal. If you desire any additional information on our view, please feel free to contact me directly at 781-715-0225.

Respectfully submitted,



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